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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Frank Rodriguez, surviving father of Daniel
10 Frank Rodriguez, individually and as co-
personal representative of the Estate of
Daniel Frank Rodriguez,

11 Plaintiffs,

12 vs.

13 City of Phoenix, et al.,

14 Defendants.
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No. CV11-02073-PHX-DGC

ORDER

16 Defendant City of Phoenix (“the City”) moves to dismiss Plaintiff’s claims against
17 it. Doc. 4. The motion has been fully briefed. Docs. 4, 5, 6. For the following reasons,
18 the Court will deny the motion.¹

19 **I. Background.**

20 This action stems from Daniel Rodriguez’s death following an altercation with
21 Phoenix Police Department Officer Richard Chrisman on October 5, 2010. Plaintiff is
22 Rodriguez’s father. On October 4, 2011, he filed a complaint on behalf of himself and as
23 “co-personal representative” of Rodriguez’s estate. Doc. 1-1, at 4. The complaint raises
24 claims against the City for wrongful death, failure to train or supervise, and loss of
25 familial association.
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28 ¹ Plaintiffs’ request for oral argument (Doc. 5) is denied because the issues are
fully briefed and argument will not aid the Court’s decision. *See* Fed. R. Civ. P. 78(b).

1 Before Plaintiff filed his complaint, Rodriguez's mother, Elvira Fernandez, filed a
2 nearly identical lawsuit in this court. Doc. 4-1. That case is currently pending before
3 Judge Martone. CV11-02001-FJM. Her complaint also raises claims, both individually
4 and as "co-personal representative" of Rodriguez's estate, against the City for wrongful
5 death, failure to train or supervise, and loss of familial association.

6 **II. Discussion.**

7 The City initially raises two grounds for dismissal: that Plaintiff's claims are
8 barred because of the pending action before Judge Martone, and that Plaintiff's claims
9 fail to meet the pleading standard articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).
10 Doc. 4. Plaintiff responds that his wrongful death and survival claims should be
11 consolidated, not dismissed, and that his claims satisfy *Iqbal*'s pleading standards.
12 Doc. 5. In its reply, the City agrees with Plaintiff's request to consolidate and notes that
13 Elvira Fernandez does not object to this arrangement. Doc. 6, at 1-2, n.1. It asks this
14 Court to consolidate the case before Judge Martone with this case, join Elvira Fernandez
15 as a required plaintiff for the survival claim, and order Plaintiff and Fernandez to elect
16 one statutory plaintiff for the wrongful death claim and file an amended complaint. *Id.*
17 at 4. The City does not pursue its pleading argument, noting that "[b]ecause Plaintiffs
18 will have the opportunity to amend, there is no reason to continue litigating whether the
19 allegations in the original complaint sufficiently state a claim upon which relief can be
20 granted." *Id.* at 4, n.4.

21 The Local Rules of Civil Procedure for the District of Arizona provide that a
22 motion to consolidate "shall contain the captions of all the cases sought to be
23 consolidated, be filed in each case and shall be heard by the District Judge assigned the
24 lowest case number." LRCiv 42.1(b). If the parties so desire, they must file a motion to
25 consolidate in Judge Martone's court because that case has been assigned the lower case
26 number.

